IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1308 OF 2006

Tiwari Brothers Mithaiwala ... Petitioners

V/s

Mrs. Meenakshi Y. Shethna & 2 ors. ... Respondents

Ms. Madhavi Deshpande & Manish Upadhye for the petitioners.

CORAM: P.V. KAKADE, J.

DATED: 13TH MARCH, 2006

P.C.:

1. Heard learned counsel for the petitioner.

2. Rule. Rule made returnable forthwith.

2. The petition is moved against the order passed by the Trial Judge in pending R.A.E. Suit No. 671/1235 of 1999 wherein Inter-locutory Notice No. 84 of 2005 was moved by the plaintiff-respondents to seek amendment in the plaint. After hearing both parties, the amendment came to be allowed by making the notice absolute and hence the present petition.

3. The petitioner defendant is the tenant occupying the suit premises and respondent filed the suit for eviction of the suit premises on various grounds. In the course of the suit which was filed in the year 1999, the plaintiff moved the Court for appointment of the Court Commissioner which came to be allowed and the Court Commissioner came to be appointed. In the report of the Court Commissioner, it was found that there was a sign-board by name "Aavarana" and below it it was written as "Salwar Kamiz". There were three boards of such type, one on the top and two boards on left and right side. This aspect prompted the respondent to seek amendment of the suit in the year 2005. The learned counsel for the petitioner submitted that, in his written statement, which was filed in 2003, he had clarified that he had no intention to change the user of the premises or change the business which was already running in the premises and had already removed the said boards. Inspite of this stand, the learned Trial Judge was of the view that the amendment was necessary and allowed the plaint to be amended accordingly.

4. I have perused the schedule of the amendment. I have also perused the reasonings adopted by the Trial Court and I do not find any infirmity in the reasonings

adopted by the Trial Court in allowing the amendment of the plaint. It is to be noted that on the basis of the Court Commissioner's report the plaintiff has taken the precaution to seek amendment of the plaint, however, the petitioner, though has denied the contention in that regard, the fact remains that the Court Commissioner's observations weighed on the mind of the Trial Court while allowing the amendment. In my view, all the relevant aspects are yet to be adjudicated by way of leading evidence in the Trial Court at the time of final hearing and, therefore, the petitioner need not feel apprehensive about the amendment which was allowed by the Trial Court in this regard which was with proper foundation by way of Court Commissioner's report.

5. In the result, the petition is misconceived and, therefore, deserves to be dismissed.

The order passed by the lower Court allowing the amendment appears to be just, legal and proper. Hence the petition stands dismissed in limine with no order as to costs.

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